

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAR PHARMACEUTICAL, INC.,

Movant,

v.

EXPRESS SCRIPTS SPECIALTY
DISTRIBUTION SERVICES, INC.,

Respondent.

Misc. Action No. 4:17-mc-510

JAZZ PHARMACEUTICALS, INC. and
JAZZ PHARMACEUTICALS IRELAND
LIMITED,

Plaintiffs,

v.

AMNEAL PHARMACEUTICALS, LLC, *et al.*,

Defendants.

C.A. No. 2:13-cv-00391-ES-JAD
(Consolidated)
Pending in the District of New Jersey

**PAR PHARMACEUTICAL, INC.'S MOTION TO COMPEL COMPLIANCE WITH
SUBPOENA *DUCES TECUM* TO THIRD PARTY EXPRESS SCRIPTS SPECIALTY
DISTRIBUTION SERVICES, INC. PURSUANT TO FED. R. CIV. P. 45**

Defendant Par Pharmaceutical, Inc. (“Par”) hereby moves, pursuant to the Federal Rule of Civil Procedure Rule 45, for an order compelling compliance with a subpoena *duces tecum* (the “Subpoena”) served on third party Express Scripts Specialty Distribution Services, Inc. (“Express Scripts”) on May 2, 2017. In support of its Motion, Par states as follows:

1. On May 2, 2017 Par served a third-party subpoena *duces tecum* on Express Scripts regarding matters related to *Jazz Pharmaceuticals, Inc. et al. v. Amneal Pharmaceuticals*

LLC et al., C.A. No. 13-00391 (ES)(JAD) (consolidated) (the “New Jersey Action”). The New Jersey Action is a patent infringement lawsuit pending in the United States District Court for the District of New Jersey, related to Par’s submission of ANDA No. 204503 to make a generic 500 mg/ml sodium oxybate oral solution, which ANDA references Jazz’s Xyrem drug product as the reference-listed drug.

2. The Subpoena issued from the U.S. District Court for the District of New Jersey and was personally served on Express Scripts on May 2, 2017.

3. The Subpoena ordered Express Scripts to produce for inspection and copying documents and things responsive to eleven requests by June 1, 2017. The requests seek, *inter alia*, prescription records for Xyrem to patients also receiving concomitant therapy with divalproex sodium or other forms of valproate, which are in Express Scripts’s possession, custody, and control.

4. Express Scripts provides exclusive distribution and other services to Jazz related to sale and marketing of Xyrem oral solution in the United States, and maintains a database of prescription records of patients receiving Xyrem.

5. On May 18, 2017, Express Scripts produced its objections and responses to the Subpoena, refusing to produce any documents responsive to any of the requests.

6. Express Scripts is represented by the law firm of Quinn Emanuel Urquhart & Sullivan LLP (“Quinn”), 51 Madison Avenue, 22nd Floor, New York, New York, 10010. This is the same firm that represents Plaintiffs in the litigation.

7. On June 9, 2017, Par’s counsel sent a letter to Express Scripts’s counsel, requesting that they reconsider their wholesale objection to the topics in the subpoena. Express Scripts’s counsel never responded in writing to this letter. *See* Ex. 13.

8. On July 6, 2017, Par's counsel met and conferred on the telephone with Express Scripts's counsel regarding the subpoena and inquired into the reasons for the objection to production of documents. *See* Ex. 14. Express Scripts's counsel stated that the primary reason was that the requests were unduly burdensome. Par's counsel requested that Express Scripts's counsel describe the nature of the burden in writing, and reiterated this request in writing on July 11, 2017. *See* Ex. 15.

9. On July 20, 2017, Express Scripts's counsel responded in writing and described the reasons as to why Express Scripts believed responding the subpoena would subject them to an undue burden. *See* Ex. 16.

10. On July 27, 2017, Par's counsel sent an e-mail to Express Scripts's counsel requesting further elaboration as to the nature and extent of the burden. *See* Ex. 17. In particular, Par's counsel requested that "If there are other modifications that [Express Scripts] would be willing to consider in order to produce responsive information, we welcome hearing them."

11. On August 9, 2017, Express Scripts's counsel responded, "We have provided adequate information to explain how and why Par's requests are unduly burdensome to ESSDS [Express Scripts] and disproportionate to the needs of the case." *See* Ex. 19.

12. Pursuant to Local Rule 37-3.04, Counsel for Par certifies that they conferred by telephone with opposing counsel on July 6, 2017 at 3:00PM ET in a good-faith effort to resolve the issues raised by the instant motion. The following individuals participated in the call: Gary Coad and Bradford Frese of Arent Fox LLP for Par, and Gabriel Brier and F. Dominic Cerrito of Quinn for Jazz. Following their telephonic meet-and-confer, the parties exchanged additional correspondence (*see* Exs. 15–21) but were unable to reach an accord. The parties met and conferred again on August 22, 2017 at 2:00 PM in a further good-faith effort to resolve the issues

raised by the instant motion, but were unable to reach an accord. The following individuals participated in the call: Gary Coad and Bradford Frese of Arent Fox LLP for Par; Gabriel Brier, Frank Calvosa, and F. Dominic Cerrito of Quinn for Express Scripts; and David Moses of Saul Ewing LLP.

WHEREFORE, Par requests that this Court compel Express Scripts to comply with the subpoena *duces tecum*, and for such further relief to Par as the Court deems just and proper.

Dated: August 25, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2017, I caused a copy of the foregoing to be served by FedEx Priority Overnight delivery and/or electronic mail (as indicated below) upon the following:

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